

Number: TBD  
EFFECTIVE DATE: December 11, 2000

## POLICY STATEMENT

**Policy Area:** Supervision

**Issue:** Offender Case Management

**Action/Guidance:** Employer Notification of Offender Supervision Status

**Context:** The Agency has established a general policy with respect to the release of sensitive offender file information (see; “Sensitive Offender File Information” policy). This policy on employer notification supplements that general policy by establishing within the Community Supervision Services Division (“CSS”) the requirement for CSS staff to notify an offender’s employer or prospective employer, in certain circumstances, that the offender is currently under supervision with CSOSA and may pose a threat to others. One of the Agency’s goals is to support offenders in obtaining gainful employment that will assist the offender in the reintegration process into the community. The Agency is also responsible for increasing public safety. Agency staff, unlike the general public, are privy to criminal history and/or other information with respect to the offenders that we are charged with supervising and therefore may have a duty to warn specific members of the public who are at a risk of physical or financial harm. This policy on employer notification addresses the release of offender information in those cases in which the employment status of the offender coupled with the criminal history and/or current offense(s) and other information may pose a potential risk of physical or financial harm to others. In supervision cases, notification to the employer of offender information will be required or other steps will be taken to attempt to lessen the risk to the public, such as barring the offender from accepting a position or directing him/her to relinquish a position. In probation cases, if it is determined that notification to the employer is not sufficient and that the most appropriate form of action is to bar the offender from accepting a position (or direct the offender to relinquish a current position), the CSO must request that the court hold a hearing on the modification of the offender’s terms and conditions of probation supervision if the offender refuses to comply.

### I. Policy:

#### A. Offender Identification and Determination of Risk

1. CSOs have a duty to warn specific third parties of an unreasonable risk of physical or financial harm that the CSO reasonably foresees the offender may pose to the third party. If it is determined that the offender’s employment would pose an unreasonable risk of physical or financial harm, the CSO must take steps to warn the public. This policy applies to all offenders under supervision, and includes both those who are convicted and those who receive probation before judgment.
2. CSO staff are required initially at the time of case assignment and periodically to review cases under active supervision to ascertain whether an offender is employed or will be employed in a “sensitive employment situation” such that he/she may pose a foreseeable and unreasonable risk of physical or financial harm to specific third parties by virtue of such employment.
3. At initial and future office visits with offenders, CSOs must discuss any current employment or potential employment plans and obtain specific details as to job duties and functions.
4. CSO staff must pay particular attention to prior employment positions of the offender in which the former employer was the victim of an action by the offender.

5. CSO staff are required to review all documents (e.g., PSI reports, offense reports, court records, etc.) for the instant offense(s) for which the offender is under supervision to learn all details of the case. CSO staff are also required to research the criminal history of offenders under supervision.
6. In determining whether a foreseeable risk of physical or financial harm exists, CSOs must take into consideration the following factors: (1) the nature of the employment at issue and the specific duties that will or are being performed; (2) the offender's current offense; (3) the offender's criminal history, including the nature and dates of the prior offenses; and (4) the offender's conduct while under supervision.
7. CSOs should pay particular attention to offenders who have a prior record or current offense **within his/her last five (5) non-incarceration years.**
8. Examples of sensitive employment situations which would normally require notification include the following: a convicted pedophile or a child sexual abuser employed in a school system or in a day care facility; a convicted embezzler employed as a bank teller; a convicted DWI/DUI offender employed in a position requiring the operation of a government or company vehicle, heavy equipment, aircraft, or commercial vessel on the water ways; an offender who tests positive for drugs and is employed as a driver of a shuttle bus or other commercial vehicle. **Note: In certain circumstances, a DWI/DUI conviction may be a bar against certain government positions that require a security clearance. These examples are not all inclusive of positions and circumstances that may require employer notification.**
9. A supervisor must review all determinations as to whether or not a foreseeable risk of physical or financial harm is present.

## **B. Employer Notification and Other Actions**

1. If the CSO determines, and the CSO's supervisor concurs, that the offender's current or prospective employment position poses an unreasonable and foreseeable risk of physical or financial harm to specific third parties, based on the factors specified in Section A, CSO staff are required to:
  - a. Advise the offender of the Agency's policy on employer notification;
  - b. Attempt to persuade the offender not to accept the position at issue or relinquish the current position;
  - c. If the offender refuses to reject the position at issue or relinquish the current position, direct the offender immediately (on or before the offender's next day on the job) to advise his/her employer of his/her current offenses and prior record, and notify the offender that there will be follow-up verification on or before his/her next day on the job and by a letter **within five (5) working days**;
  - d. Contact the employer by telephone as soon as possible but **no later than five (5) working days**, depending upon the seriousness of the offense, and verify that the disclosure was made by the offender;

- e. If the employer indicates over the telephone that the offender has not made the notification as instructed, notify the employer of the offender's information and follow-up by letter **within three (3) working days**;
  - f. If the employer indicates over the telephone that the offender did make the disclosure, follow-up the notification with the employer by letter **within five (5) working days** from the oral verification;
  - g. Document in the offender's file (electronic and/or paper) all steps taken relating to the employment notification issue; and
  - h. Consult the Agency's screening instrument to determine whether the offender's supervision level is appropriate given his/her risk to the community.
2. In the event that the employer requests additional information relating to the offender following the notification, request the offender to sign a release for such information. If the offender refuses to sign a release, advise the employer that you are not authorized to release the information without a written request pursuant to the Freedom of Information Act ("FOIA"). Such request must be directed to the Agency's FOIA office.
  3. If the employer decides to hire or retain the offender *after* a warning has been given, the CSO should prepare a letter to the employer stating that the offender is being hired/retained against specific advice of the CSO and that the Agency therefore cannot be responsible for the offender's actions on the job. The letter should be signed by the SCSO.

#### **C. Requests for Information/Inquiries**

1. One of the Agency's goals is to support offenders in obtaining gainful employment that will assist the offender in the reintegration process into the community while at the same time ensuring the safety of members of the community to the greatest extent possible.
2. Persons that may advocate for the offender against employer notification may attempt to influence CSS staff not to adhere to the policy of the Agency with respect to this issue.
3. Staff may provide to the interested party(ies) (attorney, offender, etc.) a copy of the Agency's policy with respect to employer notification.
4. Staff may also advise the interested party(ies) that the disclosure policy is governed by and conforms to the requirements of the Privacy Act (5 U.S.C. 552a).

#### **D. Modification of Conditions on Probation Conditions**

- In probation cases, if it is determined that the most appropriate form of action is to bar the offender from accepting a position or direct him/her to relinquish a current position and he/she refuses to comply, the CSO must request that the court hold a hearing on the modification of the offender's terms and conditions of probation supervision.

**II. Statutory Authority:** Section 11233(b)(2)(B) of the National Capital Revitalization and Self-Government Improvement Act of 1997 (“Revitalization Act”), Pub. Law 105-33, 111 Stat. 712, D.C. Code § 24-1233(b)(2)(B) (1996 Repl., 1999 Supp.) (Director’s authority); D.C. Code § 24-103 (1996 Repl.) (Probation’s authority).

**III. Procedural References/Supersedures:**

- References: Sensitive Offender File Information Policy Statement
- Superseded: Parole Supervision Services Division Policy Guideline #5; Department of Corrections Service Order 8010.4 (April 28, 1977).